

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE MOHAMED ANWAR

WRIT PETITION NO.23951/1995

BETWEEN:

Sri P.V.Srinivas,
s/o. Veerappa,
aged about 28 years,
resident of Annehal
Voddarahatti,
Annehal Post,
Chitradurga Taluk and District.

PETITIONER

AND: **(By Sri B.M.Siddappa, Adv.,)**

1. The Special Deputy Commissioner,
Chitradurga District,
Chitradurga.
2. The Assistant Commissioner,
Chitradurga sub-division,
Chitradurga.
3. Sri Chittappa s/o.Ompanna,
age :Major, resident of
Jampannanahatti, Annehal Village,
Chitradurga Taluk
and District.

RESPONDENTS

**(By Sri M.Siddagangaiah, GA for R2.
M.H.Datar for R3)**

This petition filed praying to quash the
order dated 7.10.86 passed by R1 vide Annexure
'E'.

This petition is coming on for hearing
this day,the Court made the following :-

ORDER

Heard the Learned Counsel for both sides.


2. Petitioner is the grand-son of the grantee Kallagatte Yellabovi who was undisputedly granted 2 acres of land in Sy.No.241 of Kodaganalu Village, Chitradurga District under grant Certificate Annexure 'A' (Saguvali Chit) dated 25.10.1961 with a condition that it shall not be alienated for a period of 15 years from 1962-63. It is also not in dispute that the grantee was a member belonging to Scheduled Caste. The said land was sold by the grantee Kallagatte Yellabovi, since deceased, to Respondent No.3 Sri Chittappa purchaser on 30.3.1973 under a Registered Sale Deed. After that KARNATAKA SCHEDULED CASTES AND SCHEDULED TRIBES (PROHIBITION OF TRANSFER OF CERTAIN LANDS) ACT, 1978 ('the act' for short) came into force, the said grantee made an application before Respondent No.2 Assistant Commissioner seeking resumption of land under Section 5 of the Act. His application was taken on file of Respondent No.3 in S.C.P.T.C.208:79-80.

No.3 in S.C.P.T.C.208:79-80. Respondent No.2 was said to have passed a considered order allowing grantees application holding the said sale transaction null and void as it was in contravention of sub-clause (4) of Rule 43-G of the Mysore Land Revenue Rules framed by the Government in exercise of powers conferred by Section 233 of the Mysore Land Revenue Rules 1888 as amended by the Mysore Land Revenue (Amendment) Rules 1960 ('the rules' for short). That order was challenged by Respondent No.3-purchaser before Respondent No.1-The Special Deputy Commissioner, appellate authority, who passed the impugned order dated 7.10.1966 produced as Annexure 'E' setting aside the order of the Assistant Commissioner and holding that the title of the land was perfected by Respondent No.3 by adverse possession. Thereafter, the original grantee died on 29.12.1994 at Annehal, Voddarahatti, Chitradurga District. To bear out this fact of his death, the true copy of the Certificate of Death granted by the competent authority dated 6.1.1995 is produced as Annexure 'B'.

3. The petitioner's case is that after the favourable order was passed by the Assistant Commissioner on 30.11.1982 his grand-father grantee was put in possession thereof and since then he had been cultivating the same personally and after his death the land remained in petitioner's possession and cultivation. He had no knowledge of the aforementioned appeal proceedings before Respondent No.1-Deputy Commissioner. His further case is that even his grand-father had no knowledge of it, whatsoever, because his wrong address was given by Respondent No.3(appellant) in his appeal petition as could be found in cause-title of the impugned order of the Deputy Commissioner at Annexure 'E', wrongly showing the grantee respondent as a resident of 'Jagalur Town'. At no point of time during his life time he was ever living in Jagalur Town. Petitioner has taken a ground in the petition that his grand-father was a permanent resident of Annehal Voddarahatti Village where he died. The further contention of the petitioner is that Respondent No.3-appellant in the said appeal before the Deputy Commissioner so giving the wrong address of the grantee Kallagatte Yellabovi

managed to engage certain counsel on his behalf after affixing a false L.T.M. on the vakalath showing the same as that of the said grantee, with the result the grantee respondent in the said appeal was effectively prevented from appearing therein and contesting the appeal.

4. The fact that at the time of the grant the grantee Kallagatte Yellabovi was not a resident of Jagalur Town but he was a resident of Jampannanahatti Grama of Chitradurga District is stated in the preamble of the impugned order of Deputy Commissioner-Annexure 'E'. Annexure 'A' grant certificate also doesnot contain his address as a resident of Jagalur Town. In the said Death Certificate also he is not shown as a resident of Jagalur. On the other hand in the column provided therein for permanent address it is stated that he was a permanent resident of Annehal Voddarahatti. From this relevant material in the undisputed documents the grievance of petitioner finds ample support.



5. Apart from above, on merit also I find that impugned order of Deputy Commissioner at Annexure 'E' cannot be sustained. Indisputably, the land inquestion had been purchased by R-3 before expiry of the prohibition period and therefore regard being had to the date of grant i.e., 25.10.1961, sub-clause 4 of Rule 43-G of the Rules gets attracted. This Rule reads:-

'43-G GRANT OF LANDS UNDER THE PROCEEDING
RULES SHALL BE SUBJECT TO THE FOLLOWING
CONDITIONS:-

(1).....

(2).....

(3).....

(4) Where the grant is made free of cost, or is made at a price which is less than the full market value, the grant shall be subject to the condition that the land shall not be alienated for a period of fifteen years from the date of the grantee




taking possession of the land, after the
taking possession of the land, after the
grant.

Provided that.....'

6. The material portion of grant certificate
Annexure 'A' is as extracted below:-

" ಮಲ್ಲಾಘಟ್ಟ ಯಲ್ಲಾಘೋವಿ ಅಂಬುವರು ಬಹಿರಂಗವಾದ
ಕೂಡಿಸಿಲ್ಲ ಡೆಪೊ ನಿಯಮಿತವಾದ ಸರ್ಕಾರ
ಕೆಪ್ಪುತ್ರಿಗೆ ಕೊಡುಕೊಡುವುದರಿಂದಲೂ ಮತ್ತ
ನದರಿ ಕೂಡು ಶ್ರಮವಾಗಿ ಮಂಜೂರಾದಲ್ಲಿದ್ದು
ಮಲ್ಲಾಘಟ್ಟ ಯಲ್ಲಾಘೋವಿ ಅಂಬುವರು ಸದರಿ
ಗೂಡಿಸಿ ಶ್ರಮವಾರಂಧು ಶ್ರಮವಾಗಿ
ಪ್ರತಿಬಿಂಬವಿರುವುದರಿಂದಲೂ ಮತ್ತ ನದರಿ ಮಲ್ಲಾಘಟ್ಟ
ಯಲ್ಲಾಘೋವಿ ಅಂಬುವರು 12-66 ರೀತಿಯಾಗ
ಶ್ರಮದ ಮೇಲಲಾಗಿ ಮೂಡಿಸುವುದು ಸರ್ಕಾರ
ಖಜಾನೆ ಪಾವತಿ ಮಾಡುವುದರಿಂದಲೂ MR 59/25-10-6,
ಜಿಲ್ಲೆಯಾಗ ಕಾಲ್ಪನಿಸಿ ಮೆಲ್ಲಾಘಟ್ಟದ ಶ್ರೀ ಕೃಷ್ಣಮೂರ್ತಿ B.A.

This extracted portion does not makes it clear whether the land was sold to the grantee in public auction or was it granted to him at a price which is less than the market value or for that matter was it free of cost so as to attract the applicability of sub-rule 4 of Rule 43-G. These points are material not made clear by distinct findings of both the authorities below in order to apply sub-rule 4 of Rule 43-G. It is incumbent upon the enquiring authority to make enquiry and record his clear finding on the question whether the land granted was free of cost or the grant was made at a price which was less than the prevailing market value. In the absence of this finding the impugned order of the Deputy Commissioner, and the order of Assistant Commissioner as well cannot be sustained in law. It is therefore necessary that the matter be remitted to Respondent No.2-Assistant Commissioner with a direction to hold fresh enquiry in the light of the observations made above.



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7. For the reasons aforesaid, the petition is allowed. The impugned order of ~~the~~ Respondent No.1-Deputy Commissioner at Annexure 'E' ^{and} ~~has~~ also the order of Respondent No.2 Assistant Commissioner passed in CPTC208/79-80 dated 30.11.1982 are quashed. The matter is remitted to Respondent No.3 Assistant Commissioner with a direction to hold fresh enquiry after giving notice of hearing and sufficient opportunity to both parties herein enabling them to effectively participate in the enquiry proceeding. The Assistant Commissioner shall pass fresh order after recording his distinct findings on the material points stated hereinabove within six months from the date of receipt of this order. In the meantime, the parties shall maintain status-quo with respect to the land in question.

Parties to bear their own costs in the circumstances.

Sd/-
JUDGE

